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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,715	02/16/2001	W. Gregory Chernoff	6631-27092	6811

7590

01/27/2004

BARNES & THORNBURG
11 South Meridian Street
Indianapolis, IN 46204

EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3739

13

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.
09/785,715

Applicant(s)
W. George Chernoff

Examiner
Ahmed M. Farah

Art Unit
3739



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jan 2, 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires three months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
it does not overcome the teachings of the prior art of record. (see attachment)
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____
- Claim(s) objected to: _____
- Claim(s) rejected: 1, 2, and 4-12
- Claim(s) withdrawn from consideration: _____
8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Art Unit: 3739

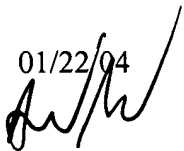
ATTACHMENT TO THE ADVISORY ACTION


1. Applicant's amendment dated on January 2, 2004, is actually a corrected version of the amendment filed on July 3, 2003, and will be entered for purpose of correcting formalities only. Applicant has made no new changes to the claims as of the amendment of January 2, 2004, and therefore this response is treated as "Request for Reconsideration."

2. Applicant's arguments filed January 2, 2004, have been fully considered but they are not persuasive. The applicant's representative argues that Blaine U.S. Patent No. 6,572,878 "is not prior art to the present application, which claims priority to a provisional application 60/063,754, filed on October 17, 1997."

In response to this argument, the present application claims priority to U.S. Patent application 09/173,990, filed on October 16, 1998, which claims priority to a provisional application 60/063,754, filed on October 17, 1997. However, the claimed priority is not given to the present application. This is due to the fact that the present application was filed on February 16, 2001, which is three months after the abandonment date (November 18, 2000) of the U.S. application 09/173,990. Hence, the effective filing date of the present application is February 16, 2001. Therefore, the examiner's position is that Blaine, which has an effective filing date of September 7, 2000, is prior art to the present application.

A. Farah

01/22/04



LINDA C. M. DVORAK
SUPERVISORY PATENT EXAMINER
GROUP 3700